

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DANIEL CARSTETTER,	:	CIVIL ACTION NO. 1:06-CV-1993
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
ADAMS COUNTY TRANSIT AUTHORITY and YORK COUNTY TRANSIT AUTHORITY,	:	
	:	
	:	
Defendants	:	

ORDER

AND NOW, this 30th day of September, 2008, upon consideration of the report (Doc. 130) of the magistrate judge, to which objections (Docs. 134, 135) were filed, recommending that the motion to dismiss (Doc. 44) of defendant York County Transit Authority (“YCTA”) be denied insofar as it alleges that plaintiff Daniel Carstetter (“Carstetter”) failed to exhaust administrative remedies under § 504 of the Rehabilitation Act (“RA”), 29 U.S.C. § 794; the Americans with Disabilities Act (“ADA”); and the Pennsylvania Human Relations Act (“PHRA”), and it appearing that a plaintiff need not pursue administrative remedies prior to bringing an action under § 504 of the RA, see Freed v. Consol. Rail Corp., 201 F.3d 188, 194 (3d Cir. 2000), that ADA plaintiffs must exhaust administrative remedies under Title VII of the Civil Rights Act of 1964 prior to bringing a suit in federal court,¹ see Buck v. Hampton Twp. Sch. Dist., 452 F.3d 256, 260 (3d Cir. 2006), and that a plaintiff may

¹Analysis of Carstetter’s claim under the PHRA is identical to that under the ADA. See Rinehimer v. Cemcolift, Inc., 292 F.3d 375, 382 (3d Cir. 2002). Therefore, the court need not discuss his PHRA claim separately.

file an ADA claim against a defendant who was not identified in the administrative charge if “the unnamed party received notice [of the claim] and . . . share[s] a commonality of interest” with a party named in the charge, Cardamone v. Murray Mgmt., No. 3:05-CV-0679, 2005 WL 3478320, at *2 (M.D. Pa. Dec. 19, 2005) (quoting Schafer v. Bd. of Pub. Educ., 903 F.2d 242, 252 (3d Cir. 1990)), and it further appearing that Carstetter named defendant Adams County Transit Authority (“ACTA”) in his administrative charge but omitted YCTA, (see Doc. 45, Ex. A at 1), and the court concluding that YCTA received notice of Carstetter’s ADA claim, through, *inter alia*, a letter directed from YCTA and ACTA’s common counsel to YCTA’s executive director on March 22, 2006, (see Doc. 27, Ex. F at 2), through a similar letter from Carstetter’s counsel to Charmaine Wise (“Wise”), who acted as ATCA’s general manager and who was an employee of YCTA, (see Doc. 71, Ex. 1; Doc. 56, Ex. A at 59; Doc. 56, Ex. C at 13), and through Wise’s assistance in defending ACTA against Carstetter’s administrative charge, (see, e.g., Doc. 22, Ex. D ¶ 24), and the court further concluding that YCTA shares a commonality of interest with ACTA because Carstetter has proffered evidence that YCTA exercised extensive control over ACTA operations such that YCTA’s participation in administrative conciliation efforts was unnecessary, see Shafer, 903 F.2d at 252 n.7 (citing Glus v. G.C. Murphy Co., 629 F.2d 248 (3d Cir. 1980)), vacated on other grounds, 451 U.S. 935 (1981)) (identifying similarity between the named and unnamed parties as a factor affecting commonality of interest); see also Huggins v. Coatesville Area Sch. Dist., No. Civ. A. 07-4917, 2008 WL 4072801, at *6 n.8 (E.D. Pa.

Aug. 27, 2008); (Doc. 56, Ex. A at 58 (stating that YCTA's executive director performs similar functions on behalf of both YCTA and ACTA); Doc. 56, Ex. G at 18-19 (stating that Wise possessed authority to hire and fire ACTA employees); Doc. 57, Ex. Z at 17-18, 25-26 (reflecting that ACTA's health insurance plan is registered as a subgroup of YCTA's policy)), that YCTA did not suffer prejudice from Carstetter's omission because YCTA knew of his administrative charge and participated in the defense thereof, see Shafer, 903 F.2d at 252 n.7 (holding that prejudice affects commonality of interest), and that YCTA represented to Carstetter that ACTA served as a conduit between him and YCTA, see Shafer, 903 F.2d at 252 n.7 (stating that unnamed party's representations affect commonality of interest); (see also, e.g., Doc. 56, Ex. Q at 30 (stating that Wise approved ACTA's payroll); Doc. 59, Ex. VV at 4 (reflecting that Wise handled Carstetter's request for insurance benefits); Doc. 59, Ex. XX (same)),² it is hereby ORDERED that:

1. The report (Doc. 130) of the magistrate judge is ADOPTED.
2. The motion to dismiss (Doc. 44) of defendant YCTA is DENIED.
3. A revised pretrial and trial schedule shall issue by future order of court.

S/ Christopher C. Conner
 CHRISTOPHER C. CONNER
 United States District Judge

²A plaintiff's ignorance of an unnamed party's role in the alleged discrimination also contributes to commonality of interest. Shafer, 903 F.2d at 252 n.7. In the instant case, Carstetter knew of YCTA's control over ACTA at the time he filed the administrative charge. However, the extensive evidence supporting a commonality of interest between YCTA and ACTA outweighs Carstetter's neglect when failing to identify YCTA in his administrative charge.